

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

LINDA S. BROWN, )  
v. )  
**Plaintiff,** )      No. 3:12-cv-1048  
                )      Judge Sharp  
CAPE ENVIRONMENTAL )      Magistrate Judge Knowles  
MANAGEMENT CAPE, INC., )  
**Defendant.** )

**ORDER**

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that *Defendant’s Motion to Dismiss* “for insufficient service of process and, consequently, lack of personal jurisdiction over Defendant” (Docket Entry No. 9) be denied.<sup>1</sup> The R & R provides, in part,

In view of the foregoing, it is difficult to blame anyone for the fact that Defendant was not properly served. It is clear, however, that no fault is attributable to Plaintiff.<sup>2</sup> Under the reasoning of *Byrd*<sup>3</sup> it would be inappropriate to dismiss this action because of insufficient service of process.

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For the foregoing reasons, the instant Motion (Docket No. 9) should be DENIED. (Docket Entry No. 12 at 4). No objections were made to the R & R.

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<sup>1</sup> Plaintiff filed no response in opposition to the motion.

<sup>2</sup> Plaintiff is proceeding *pro se* and *in forma pauperis*. (Docket Entry No. 4).

<sup>3</sup> The Sixth Circuit, in *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996), held that the failure of the District Court Clerk and United States Marshals Service to “accomplish their respective duties to issue and serve process for plaintiff proceeding in forma pauperis constituted good cause for plaintiff’s failure to timely serve defendant.” See (Docket Entry No. 12 at 3).

Where no objections are made to the R & R, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b). Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R.

Accordingly, the Court hereby rules as follows:

- (1) The Report and Recommendation (Docket Entry No. 12) is hereby ACCEPTED and APPROVED; and
- (2) *Defendant's Motion to Dismiss* (Docket Entry No. 9) is hereby DENIED.

This action is hereby returned to the Magistrate Judge for further pretrial management in accordance with Local Rule 16.01.<sup>4</sup>

**It is SO ORDERED.**

  
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KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> The Court is aware the Magistrate Judge entered a subsequent R & R on September 11, 2013, addressing *Defendant's Motion to Dismiss for Failure to Prosecute*. See (Docket Entry Nos. 21 and 24). An Order will be issued once written objections, if any, are filed by Plaintiff and reviewed by the Court.